

AUG 24 2007

PTO/SB/17 (07-07)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Effective on 12/08/2004.
Fee pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4816).

FEE TRANSMITTAL For FY 2007

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT	(\\$) 500
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Complete if Known

Application Number	10/630,282
Filing Date	July 30, 2003
First Named Inventor	Richard Martin Jacobson
Examiner Name	Sebiba Naim Qazi
Art Unit	1616
Attorney Docket No.	AD1395

METHOD OF PAYMENT (check all that apply)

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

2. EXCESS CLAIM FEES

Fee Description

	Small Entity	Fee (\$)	Fee (\$)
Each claim over 20 (including Reissues)		50	25
Each independent claim over 3 (including Reissues)		200	100
Multiple dependent claims		360	180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims	Fee (\$)	Fee Paid (\$)
- 20 or HP =	x	=				

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims	Fee (\$)	Fee Paid (\$)
- 3 or HP =	x	=				

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(g).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/ 50 =	(round up to a whole number) x		

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)	Fee Paid (\$)
Other (e.g., late filing surcharge): Annual Brief	\$500

SUBMITTED BY

Signature	Thomas D. Rogerson	Registration No. (Attorney/Agent) 38,602	Telephone 215-619-1569
Name (Print/Type)	Thomas D. Rogerson		Date August 24, 2007

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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TRANSMITTAL
FORM

(To be used for all correspondence after initial filing.)

Total Number of Pages in This Submission

23

Application Number	10/630,282
Filing Date	July 30, 2003
First Named Inventor	Richard Martin Jacobson
Art Unit	1616
Examiner Name	Sabha Naim Qazi

Attorney Docket Number

A01395

ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavit(s)/Declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	
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<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Reply to Missing Parts/ Incomplete Application	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Rohm and Haas Company		
Signature	<i>Thomas D. Rogerson</i>		
Printed name	Thomas D. Rogerson		
Date	August 24, 2007	Reg. No.	38,602

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature	<i>Thomas D. Rogerson</i>		
Typed or printed name	Thomas D. Rogerson	Date	August 24, 2007

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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GROUP ART UNIT: 1616
APPEAL NO. _____

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

APPEAL BRIEF

In re the Application of Richard Martin Jacobson et al.

Filed: July 30, 2003

Serial No. 10/630,282

For

**STABLE ETHYLENE INHIBITING COMPOUNDS AND
METHODS FOR THEIR PREPARATION**

Thomas D. Rogerson
Attorney for Appellants

Sabiha Naim Qazi
Examiner

Enclosed:
Transmittal Form
Fee Transmittal Form

10/630,282

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AUG 24 2007

Mail Stop Appeal Brief - Patents

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

DN A01395

In re application of: Richard Martin Jacobson, et.al.

Serial No.: 10/630,282 : Group Art Unit: 1616

Filed: 07/30/2003 : Examiner: S. Qazi

For: STABLE ETHYLENE INHIBITING COMPOUNDS AND METHODS
FOR THEIR PREPARATION

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

This is an appeal from the Final Rejection dated February 14, 2007 finally rejecting claims 2 to 4. Claims 2 to 4 are being appealed, claims 1 and 5 to 8 having been withdrawn from consideration but subject to rejoinder. The appealed claims are set out in Appendix J. Appellants filed a Notice of Appeal pursuant to 37 C.F.R. § 1.191 on June 25, 2007.

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(C) Real Party In Interest

The owner of the present application and the invention contained therein is
ROHM AND HAAS COMPANY.

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(D) Related Appeals, Interferences or Judicial Proceedings

No appeals, interferences or judicial proceedings are known to Appellants, the Appellants' legal representative, or the assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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(E) Status Of Claims

The status of the claims is as follows:

Claims pending: 2 - 4

Allowed claims: none

Claims objected to: none

Claims canceled: none

Claims rejected: 2 - 4

Claims on appeal: 2 - 4

Claims withdrawn from consideration by the Examiner: 1 and 5 - 8.

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(F) Status Of Amendments

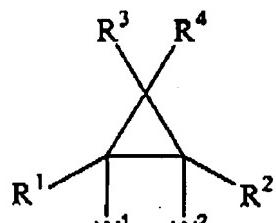
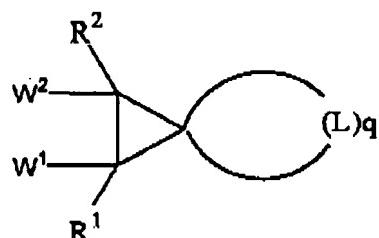
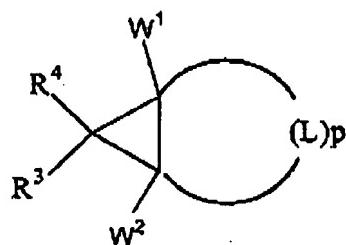
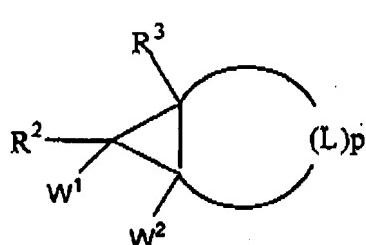
Appellants filed an Amendment after Final Rejection on April 16, 2007. The Advisory Action mailed on May 23, 2007 did not indicate whether or not the Amendment would be entered for purposes of appeal. However, as the proposed amendment was strictly for clarification and at the suggestion of the Examiner, the claims presented and argued herein include the amendments made in the Amendment after Final Rejection.

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(G) Summary of Claimed Subject Matter

Claim 2. The present invention provides a cyclopropane compound selected from the group consisting of: [Page 3, line 9 to Page 4, line 1]

**V****VI****VII**and**VIII**

wherein:

- a) each R¹, R², R³, and R⁴ is independently a group of the formula: [Page 4 line 8 to Page 4 line 13]

-(L)_n-Z

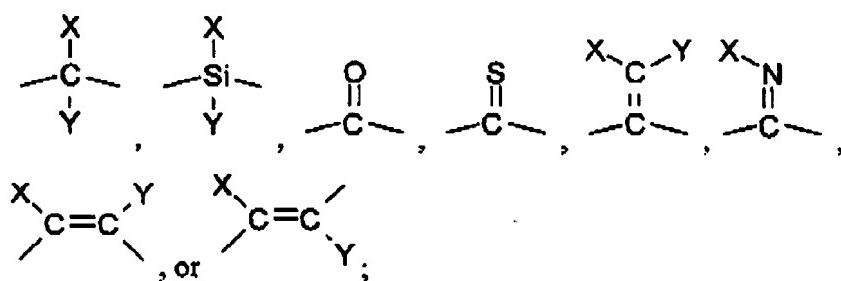
- i) p is an integer from 3 to 10;
q is an integer from 4 to 11;
n is an integer from 0 to 12;
- ii) each L is independently selected from a member of the group D, E, or J

[Page 4, line 14 to Page 5, line 15]

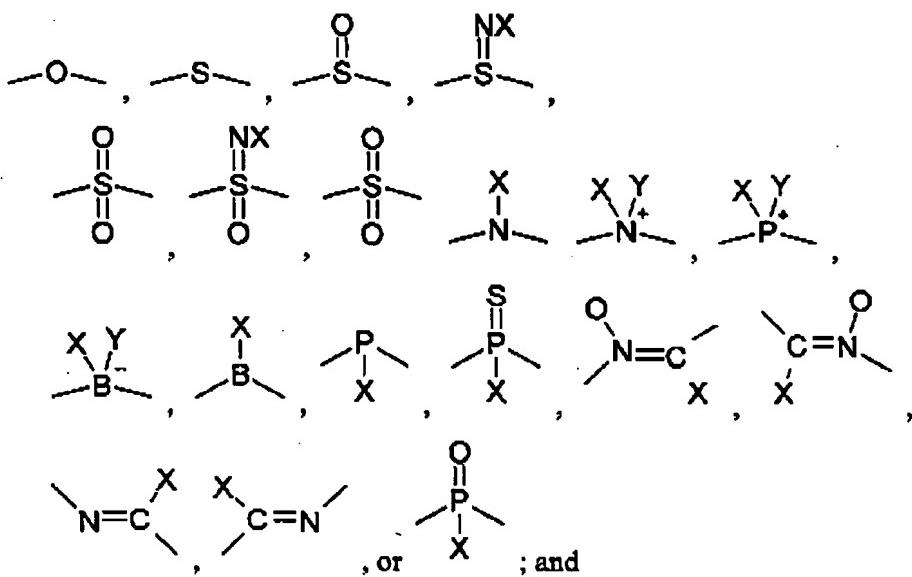
D is of the formula:

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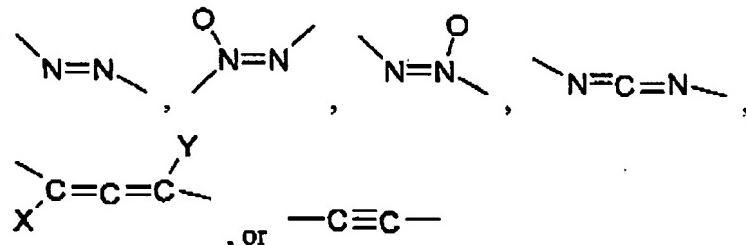
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E is of the formula:



J is of the formula:



A) each X and Y is independently a group of the formula:

 $-(L)_m-Z;$

and

B) m is an integer from 0 to 8; and

C) no more than two E groups are adjacent to each other and no J groups are adjacent to each other;

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iii) each Z is independently selected from: [Page 5, line 16 to Page 6, line 13]

- A) hydrogen, halo, cyano, nitro, nitroso, azido, chlorate, bromate, iodate, isocyanato, isocyanido, isothiocyanato, pentafluorothio, or
 - B) a group G, wherein G is an unsubstituted or substituted; unsaturated, partially saturated, or saturated; monocyclic, bicyclic, tricyclic, or fused; carbocyclic or heterocyclic ring system wherein:
 - 1) when the ring system contains a 3 or 4 membered heterocyclic ring, the heterocyclic ring contains 1 heteroatom;
 - 2) when the ring system contains a 5, or more, membered heterocyclic ring or a polycyclic heterocyclic ring, the heterocyclic or polycyclic heterocyclic ring contains from 1 to 4 heteroatoms;
 - 3) each heteroatom is independently selected from N, O, and S;
 - 4) the number of substituents is from 0 to 5 and each substituent is independently selected from X;
- b) W¹ and W² are selected from F, Cl, Br, I, alkoxy, acyloxy, alkoxycarbonyloxy, aminocarbonyloxy, alkylaminocarbonyloxy, dialkylaminocarbonyloxy, alkylsulfonyloxy, and arylsulfonyloxy; [Page 6, lines 14-16]
- c) provided that at least one of W¹ and W² is I; [Page 6, line 17] and
- d) the total number of non-hydrogen atoms is 50 or less. [Page 6, lines 18-19]

Such compounds are useful as stable precursors used to generate cyclopropenes which, in turn, are useful to inhibit the ethylene response in plants. [Page 2, lines 10-16, Page 3, lines 1-3 and 6-8]

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(H) Grounds of Rejection to be Reviewed on Appeal

Claims 2 - 4 stand rejected on the ground of obviousness-type double patenting over US 7,041,625 ("625") and US 6,770,600 ("600") in view of Morrison & Boyd, Chapter 6, pp 177-188 ("Morrison & Boyd"); under 35 U.S.C. § 103(a) over US 3,265,745 ("Seyferth"); and under 35 U.S.C. § 103(a) over *J. Chem. Soc. Perkin Trans 1*, 1986, pp1845-1853 ("Baird").

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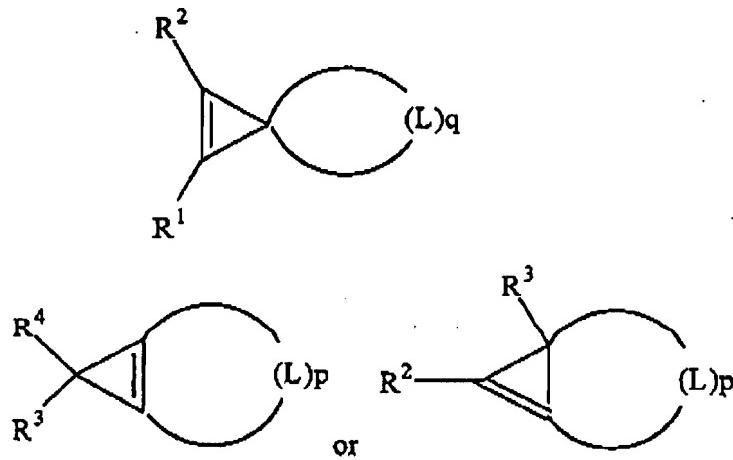
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I Argument**Regarding Double Patenting:**

Claims 2-4 are rejected on the ground of obviousness-type double patenting as being unpatentable over claims 1 and 2 of US 7,041,625 ("'625") and claims 7-10 of US 6,770,600 ("'600") in view of Morrison & Boyd, Chapter 6, pp 177-188 ("Morrison & Boyd").

- a. TheAppealed Claims 2-4 are Patentably Distinct From the Claims of '600 and '625.

The cited patents, '625 and '600, each disclose the use of cyclopropene compounds to inhibit the ethylene response in plants. '600 discloses a system for the delivery of such cyclopropene compounds to plants. The invention disclosed in '600 does not utilize in any way the compounds of appealed Claims 2-4. As such, the invention disclosed in '600 can easily be practiced in light of Appellants' invention. Appellants' claims would not inhibit one from practicing the invention disclosed in '600 in any way. Conversely, the claims of '600 would not prevent one from practicing the invention of appealed claims 2-4. As a result, as far as '600 goes, there would be no unjustified or improper extension of the right to exclude should Appellants' claims be granted. Therefore, the purpose of a double patenting rejection does not apply as regards '600. '625 relates to the use of compounds of the formulae:



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to inhibit the ethylene response in plants. Compounds of these formulae would be produced by Appellants' method of now withdrawn claim 5 by using the compounds of appealed claims 2-4 as precursor compounds. However, as provided in '625, there are many other methods which can be used to prepare the compounds of the above formulae which do not involve the compounds of appealed claims 2-4. As a result, one could still practice the invention of '625 if Appellants' claims were granted. Conversely, the claims of '625 would not prevent one from practicing the invention of appealed claims 2-4. So again, there would be no unjustified or improper extension of the right to exclude should Appellants' claims be granted.

Appellants' invention provides precursor compounds which can be used in a method to generate cyclopropene compounds which subsequently can be utilized in the inventions of '600 and '625, but would in no way prevent the use of such cyclopropene compounds themselves.

b. The Prior Art Fails to Provide a Motivation to Combine the References so as to Produce the Claimed Invention

Morrison & Boyd merely discloses general reactions of double bonds, including a large variety of reactions that can be used to convert double bonds to saturated bonds. However, there is no teaching or suggestion in Morrison & Boyd that such a process can be used as a method to stabilize a cyclopropene double bond so that the cyclopropene can later be regenerated. The potential energy diagram in Fig 6.3 of Morrison & Boyd cited by the Examiner to support the fact that a saturated bond is more stable than an unsaturated bond only discloses the potential energy relationship for hydrogenation of linear double bonds, not those found in highly strained cyclic compounds such as cyclopropenes. Appellants' invention is compounds which can serve as cyclopropene precursor compounds. Nothing in Morrison & Boyd would lead one skilled in the art to take the cyclopropene compounds disclosed in '625 and '600 and convert them to their saturated cyclopropane analogs with the expectation that the cyclopropene compound would then be subsequently regenerated from the cyclopropane analog. This, in effect,

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would add two additional steps to utilize the inventions disclosed in '625 and '600. For these reasons, it would not have been obvious to one skilled in the art to perform such reactions.

Regarding rejection 1 under 35 U.S.C. § 103(a) over US 3,265,745 ("Seyferth"):

Claims 2-4 are rejected under 35 USC §103(a) as being unpatentable over Seyferth et al (US Patent 3,265,745) in that Seyferth discloses dihalocyclopropanes.

The Prior Art Fails to Provide a Motivation to to Produce the Claimed Invention

The disclosure of Seyferth would not motivate one skilled in the art to prepare Appellants' cyclopropane compounds. Contrary to the statement in the Office Action, Seyferth discloses *gem*-dihalocyclopropanes, not 1,2-dihalocyclopropanes. The Examiner has cited Seyferth, col. 1, lines 23-27, as teaching such 1,2-dihalo compounds. Appellants respectfully submit that the Examiner is missreading the reference. The Examiner states that col.1, lines 23-27 teaches: "1,1-dihalo cyclopropanes means either 1,1 dihalo cyclopropane itself or compounds having substituents on either of the other two carbon atoms in the cyclopropene ring" and that this is a teaching of 1,2-dihalocyclopropanes. In fact, Seyferth states: "By the term 1,1 dihalocyclopropanes it is meant either 1,1-dihalocyclpropane itself or compounds having sustituents on either one or both of the other two carbon atoms in the cyclopropane ring, i.e., the carbon atoms numbered 2 and 3 in the cyclopropane ring." It is Appellants' position that this statement defines 1,1-dihalocyclopropane or a 1,1-dihalocyclopropane with additional substituents on one or more of the 2 and 3 positions, not a 1,2-dihalocyclopropane. Seyferth clearly teaches and, in fact requires, cyclopropanes that must be 1,1-dihalo substituted, i.e., compounds in which both of the key halo substituents are on the same carbon. These are significantly different from the 1,2-substituted cyclopropanes of Appellants, i.e., compounds in which the key halo substituents are on adjacent carbons. There is no teaching or suggestion in Seyferth that would motivate one skilled in the art to prepare 1,2-disubstituted cyclopropanes. The motivation of Seyferth was to provide a novel route to 1,1-dihalocyclopropanes (see col. 1, lines 10-12). Seyferth's method always results in the formation of a *gem*-dihalo -substituted three membered ring compound because the

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method generates a dihalocarbene adduct which adds to a double bond (see col. 2, lines 10-12 and col 3, lines 23-24 and 35-37). Appellants' compounds, on the other hand, require a 1,2-substituted cyclopropane.

Furthermore, there is no suggestion that such compounds are useful precursors for the production of cyclopropenes with ethylene inhibition activity. The *gem*-dihalosubstituted compounds of Seyferth are used for entirely different purposes (see col. 5, line 59 to col. 6, line 2) and, in fact, cannot be converted to the cyclopropenes of Appellants' Structures I-IV using Appellants' processes (see withdrawn claim 5). As a result, one skilled in the art and familiar with Seyferth would not be motivated to prepare Appellants' compounds.

Regarding rejection 2 under 35 U.S.C. § 103(a) over *J. Chem. Soc. Perkin Trans 1*, 1986, pp 1845-1853 ("Baird")

Claims 2-4 are rejected under 35 USC 103(a) as being unpatentable over Baird et al. *J. Chem. Soc. Perkin Trans 1*, 1986, pp 1845-1853 ("Baird") in that Baird teaches addition of substitutents to cyclopropenes to prepare cyclopropanes.

The Prior Art Fails to Provide a Motivation to to Produce the Claimed Invention

Baird teaches the preparation of 1-halocyclopropenes by treatment of 1,1,2-trihalocyclopropanes with methylolithium. Throughout the reference, Baird teaches that "halogen = bromine, chlorine". There is no disclosure, teaching, or suggestion that the halogen can be iodo. All of Appellants' claimed compounds require at least one iodo substituent (as substituents labeled W1 and/or W2). Baird teaches the preparation of 1-halogenocyclopropenes from 1,1,2-trihalogencyclopropanes (halogen = bromine, chlorine) which are then lithiated by lithium-halogen exchange to give 1-lithiocyclopropenes which are then trapped by electrophiles (See the abstract.) Baird's motivation was: "... part of a broad examination of the chemistry of tri- and tetra-halogenated cyclopropanes...". (See p. 1845, second paragraph.) Thus, the motivation of Baird, to form a 1-halogenocyclopropene, where the halogen is bromine or chlorine, to be subsequently converted to a 1-lithiocyclopropene in a study of reaction chemistry, is significantly different from that of Appellants. Appellants' motivation is to provide

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stable precursors of cyclopropenes by converting the cyclopropenes to iodo-substituted cyclopropanes, which can subsequently be converted back to the cyclopropenes (see the Specification page 2, lines 17-21) using the method of withdrawn claim 5. The cyclopropene is then subsequently used to antagonize the ethylene response in a plant using the method of withdrawn claim 8. Appellants respectfully submit that the prior art could not have suggested to one skilled in the art stabilization of unstable cyclopropene molecules by converting them to their more stable cyclopropane analogs. Appellants claims 2 - 4 are claims to such stable cyclopropane analogs.

CONCLUSION

Based on the foregoing, Appellants respectfully submit that the pending claims are currently in condition for allowance. Appellants respectfully request the Board to pass the pending claims to allowance.

Enclosed herewith, Appellants have filed a Certificate of Mailing to establish the timely filing of this Appeal Brief.

The Commissioner is hereby authorized to charge any additional fee which may be required; or to credit any overpayments to Deposit Account 18-1850.

Respectfully submitted,



Thomas D. Rogerson
Attorney for Applicants
Registration No. 38,602
Telephone: 215-619-1569

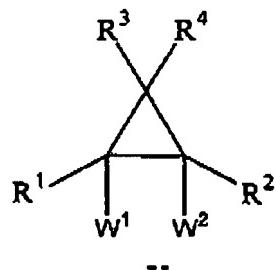
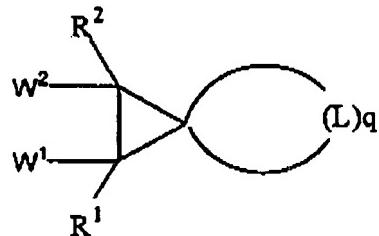
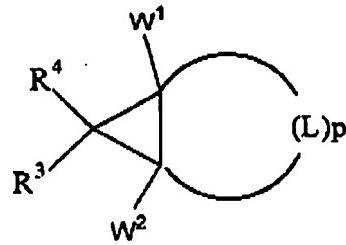
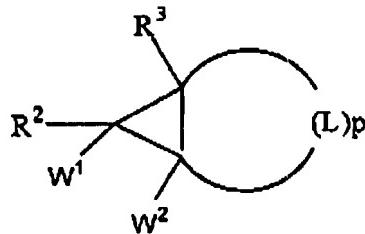
Patent Department, 7th Floor
Rohm and Haas Company
100 Independence Mall West
Philadelphia, PA 19106-2399
Date: August 24, 2007

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(J) Claims Appendix

2. (Currently Amended) A cyclopropane compound comprising a structure selected from the group consisting of:

**V****VI****VII****and** **VIII**

wherein:

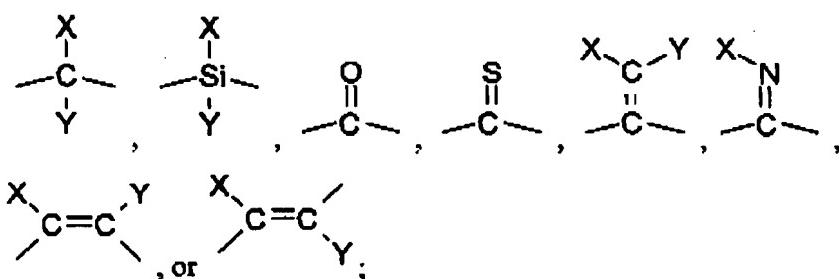
a) each R¹, R², R³, and R⁴ is independently a group of the formula:

-(L)_n-Z

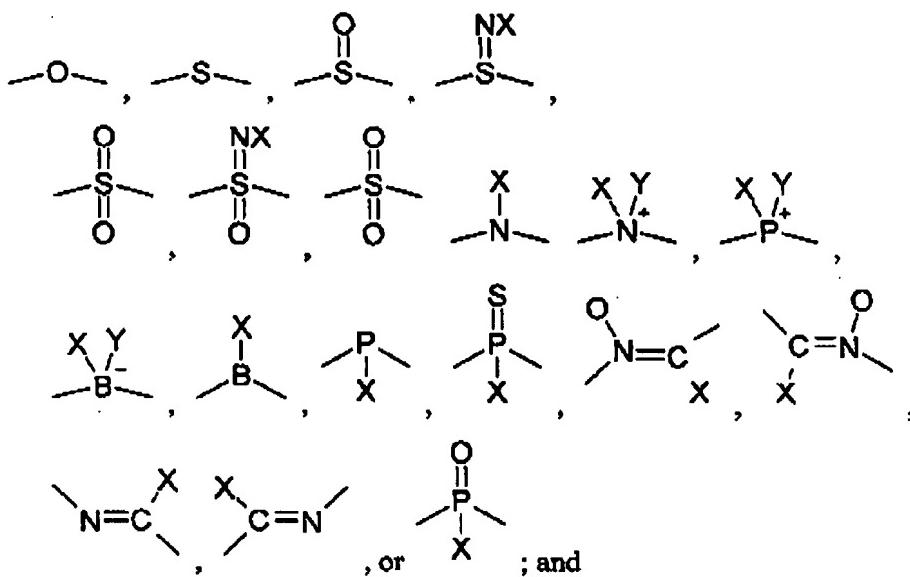
- i) p is an integer from 3 to 10;
q is an integer from 4 to 11;
n is an integer from 0 to 12;
- ii) each L is independently selected from a member of the group D, E, or J
D is of the formula:

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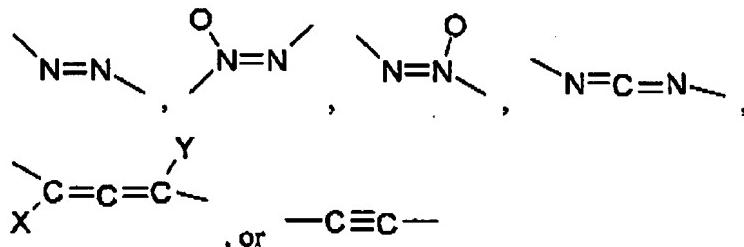
A01395



E is of the formula:



J is of the formula:



A) each X and Y is independently a group of the formula:

$-(L)_m-Z$;

and

B) m is an integer from 0 to 8; and

C) no more than two E groups are adjacent to each other and no J groups are adjacent to each other;

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iii) each Z is independently selected from:

- A) hydrogen, halo, cyano, nitro, nitroso, azido, chlorate, bromate, iodate, isocyanato, isocyanido, isothiocyanato, pentafluorothio, or
- B) a group G, wherein G is an unsubstituted or substituted; unsaturated, partially saturated, or saturated; monocyclic, bicyclic, tricyclic, or fused; carbocyclic or heterocyclic ring system wherein:
 - 1) when the ring system contains a 3 or 4 membered heterocyclic ring, the heterocyclic ring contains 1 heteroatom;
 - 2) when the ring system contains a 5, or more, membered heterocyclic ring or a polycyclic heterocyclic ring, the heterocyclic or polycyclic heterocyclic ring contains from 1 to 4 heteroatoms;
 - 3) each heteroatom is independently selected from N, O, and S;
 - 4) the number of substituents is from 0 to 5 and each substituent is independently selected from X;

- b) W¹ and W² are selected from F, Cl, Br, I, alkoxy, acyloxy, alkoxycarbonyloxy, aminocarbonyloxy, alkylaminocarbonyloxy, dialkylaminocarbonyloxy, alkylsulfonyloxy, and arylsulfonyloxy;
- c) provided that at least one of W¹ and W² is I; and
- d) the total number of non-hydrogen atoms is 50 or less.

3. (Original) The compound of claim 2 wherein each of W1 and W2 are I.

4. (Original) The compound 1,2-diido-1-methylecyclopropane.

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(K) Evidence Appendix

No evidence was submitted during prosecution.

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(L) Related Proceedings Appendix

There are no related proceedings.